

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SP.CIVIL APPLICATION NOS.4240 & 12390 TO 12395 OF 2004
with

SP.CIVIL APPLICATION NOS.4223 & 12396 TO 12400 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-

and

HON'BLE MR.JUSTICE SHARAD D.DAVE sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

INDIAN METAL TRADERS	PROP. CHAUDHRY & CHAUDHRY SHIP
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Versus

UNION OF INDIA	
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Appearance:

Special Civil Application No. 4240 of 2004 & others

MR PARESH M DAVE for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/09/2004

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Rule. Learned Standing Counsel Shri J.M.Malkan waives service of Rule on behalf of all the respondents in all these petitions.

2. Special Civil Applications Nos.4240 and 12390 to 12395, all of 2004, are filed by the petitioner M/s. Indian Metal Traders. All these petitions are arising out of the impugned common order dated 13.11.2002 (Annexure:G) passed by the Customs, Excise & Gold (Control) Appellate Tribunal, Camp at Vadodara (for short "Appellate Tribunal") in Stay Application Nos.C/S 2870-2876/02-Mum in Appeal Nos.C/1310 to 1316/2002-Mum and the impugned common Order dated 4.12.2003 (Annexure:K) passed by the Appellate Tribunal in C/M/2229/02-Mum in C/1310-16/02-Mum, filed by the petitioner Indian Metal Traders. Special Civil Applications No.4223 and 12396 to 12400, all of 2004, are filed by the petitioners Hindustan Ship Breaking Yard. All these petitions are arising out of the impugned common Order (Annexure:G) dated 13.11.2002 passed in Stay Application No.C/S 2877 to 2882 of 2002 in Appeal No.1317 to 1322 of 2002 and the impugned common order dated 4.12.2003 (Annexure:I) passed by the Appellate Tribunal in C/M/2228/02-Mum in Appeal No.C/1317-22/02-Mum filed by the petitioner Hindustan Ship Breaking Yard.

3. The Appellate Tribunal by its impugned orders dated 13.11.2002 (Annexure : G in the petitions) disposed of the main Appeals No.C/1310-1316/02, filed by the petitioners Indian Metal Traders and Appeals No.C/1317 to 1322 of 2002, filed by the petitioner Hindustan Ship Breaking Yard, by directing the Appellants - petitioners Indian Metal Traders to deposit Rs.15 lacs towards the liability under the demands made, which was the subject matter of Appeals, within a period of 6 weeks from the date of the order i.e. 13.11.2002, and on depositing the said Amount the Commissioner (Appeals) was directed to restore the Appeals before him and hear and decide the same on merits. If the amount was not deposited within the prescribed time then those Appeals before the Tribunal be treated as dismissed.

In case of M/s. Hindustan Ship Breaking Yard identical order was passed, except the amount of deposit of Rs.5.5 lacs by the Tribunal on 13.11.2002 (Annex.:G).

4. In identical cases another Bench of the Appellate Tribunal at Mumbai, passed an order dated 29.10.2002 in case of M/s. Priya Holdings Pvt.Ltd. and M/s. Priya

Blue Pvt.Ltd. and waived pre-deposit and remanded the cases for fresh adjudication to the Dy.Commissioner, Customs and in case of M/s. Kamdar Associates similar order was passed by another Bench of Appellate Tribunal at Mumbai on 2.11.2002. Another Bench of the Appellate Tribunal at New Delhi also passed an order and remanded the case for adjudication to the Dy.Commissioner, Customs in the case of M/s.Tejas Sales Corporation, whereas the Appellate Tribunal, Camp at Vadodara, had passed conditional order of pre-deposit on 13.11.2002, therefore, both the petitioners M/s.India Metal Traders and M/s. Hindustan Ship Breaking Yard, filed separate modification Applications dated 11.12.2002 (Annexure : J in Sp.Civil Application No.4240/04 and annexure : H in Sp.Civil Application No.4223/04 respectively). However, those two Applications dated 11.12.2002 came to be dismissed by the Appellate Tribunal by its common order dated 3.12.2003 (Annexure : K in Sp.Civil Application No.4240/04 and Annexure:I in Sp.Civil Application No.4223/04 respectively) by holding that it had passed the order dated 13.11.2002 which was in the nature of final order and when the appellants failed to make the deposit the Appeals would obviously stands dismissed. Therefore, there was no scope for allowing the modification Application. Accordingly, both the Applications were dismissed by common order dated 4.12.2003.

5. Shri Dave, learned Counsel for the petitioners submitted that hundreds of Appeals were filed by different parties before the Appellate Tribunal against the orders passed by the Commissioner (Appeals) ordering pre-deposit on Stay Application. Unfortunately, the Appeals filed by the present petitioners were placed before the Circuit Bench of Appellate Tribunal, Camp at Vadodara on 1.11.2002, where the impugned orders at Annexure:G were passed in both these petitions, whereas another bench of the Appellate Tribunal at Mumbai heard and disposed of in all 24 Appeals filed by the other Appellants M/s.Priya Holdings Pvt.Ltd. and M/s.Priya Blue Industries Pvt.Ltd. and the matters were remanded to the Dy.Commissioner of Customs for deciding the same on merits, by waiving the pre-deposit. Relying on this decision another Bench of the Appellate Tribunal at Mumbai heard and disposed of, in all 523 Appeals, filed by other Appeals, and remanded the cases for fresh decision to the Dy.Commissioner of Customs by waiving pre-deposit. Coming to know about this order passed by other Benches of the Appellate Tribunal at Mumbai, the petitioners had applied before the same Bench of Appellate Tribunal for modification of its earlier order.

But, as stated earlier, their Applications were rejected by the Tribunal by its common order dated 4.12.2003 on the ground that the order was in the nature of final order, therefore, when the Appellants failed to deposit the amount then their Appeals would stand dismissed and, therefore, there was no question of granting their modification Applications.

6. From the above it is clear that two other Benches of the same Appellate Tribunal at Mumbai had allowed, in all, 523 Appeals filed by other different Appellants and the cases were remanded to the Commissioner (Appeals) with a direction to decide the same on merits by waiving pre-deposit. But, the Bench of the Appellate Tribunal, Camp at Vadodara, without being aware of the orders passed by other Benches of the Appellate Tribunal on 21.10.2002 and 31.10.2002 passed totally different orders and directed the petitioners - Appellants to deposit certain amount. When the petitioners came to know about those orders passed by Co-ordinate Benches of the same Appellate Tribunal they immediately applied before the same Bench of the Appellate Tribunal by way of Applications which were rejected by the same Bench of the Appellate Tribunal on the grounds mentioned in its order. In such type of situation there is no other option for this Court but to allow the petitions and quash and set aside the impugned orders dated 13.11.2002 (Annexure:G in both petitions, as well as impugned order dated 4.12.2003 passed by the Appellate Tribunal in Modification Applications).

7. In view of the above discussion all these petitions are allowed and the impugned orders dated 13.11.2002 (Annexure:G in all the petitions) and the impugned common order dated 4.12.2003, passed by the Appellate Tribunal below Application No.C/M/2228/2002-Mum are hereby quashed and set aside and all the matters are remanded to the Appellate Tribunal for deciding the matters afresh in light of the orders dated 21.10.2002 and 31.10.2002 passed by other Benches of the Appellate Tribunal at Mumbai.

Rule made absolute in all these petitions.
However, there shall be no order as to costs. Interim relief, granted earlier, shall stand vacated.

sd/-

(B.J.Shethna, J.)

Date : September 24, 2004 sd/-

(Sharad D.Dave, J.)

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